

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

## Summary of Proposed Amendments to Title 5, Division 1, rule 5.45 to the Local Rules

### Conduct of status conferences and settlement conferences

Proposed amendments to rule 5.45 of the court's Local Rules ("Rules") entitled *Conduct of status conferences and settlement conferences* is part of the court's continuing effort to review, correct, and update its Rules as needed.

Proposed amendments to rule 5.45 are summarized below immediately followed by the full text with deletions noted in ~~striketrough~~ and additions in underline.

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#### SUMMARY

- ☐ The proposed amendments to the rule add clarity and specificity regarding the court's expectations of what is required from attorneys and parties involved in status conference or settlement conference proceedings in family law cases.

#### TEXT OF PROPOSED LOCAL RULE

#### Rule 5.45. Conduct of status conferences and settlement conferences

##### (a) Status conferences

Four days prior to any status conference, each party must serve and file a description of the current status of the matter. The parties must use the *Status Conference Questionnaire (Local Form ALA FL-041)* form for this purpose. At the status conference, the court may set the matter for further status conference, for settlement conference and trial, or make such other orders the judge determines are appropriate.

##### (b) Settlement conference (voluntary and mandatory)

At least fifteen days before any settlement conference, all attorneys and all parties must conduct a face to face meeting to confer in good faith in an effort to settle all issues in the case. This meeting must be scheduled by counsel or self-represented parties at the time the settlement conference is set to assure that the meeting takes place in a timely manner. If a restraining order prohibits face to face contact between the parties, the parties may attend the meeting by telephone or in separate locations. At least seven days before any settlement conference, each party must serve on the other party a written offer of sufficient

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specificity to be enforceable that, if accepted, would resolve all issues remaining in dispute; a copy of this offer must be brought to the settlement conference. At least five days before any settlement conference, each party must serve and file a settlement conference statement. ~~Each statement that~~ must contain the following information set forth below:

- (1) A summary of all contested and uncontested issues, including a brief description of the terms of any stipulations, agreements, or settlements~~The date of marriage or registration of domestic partnership, date of separation asserted by the party submitting the statement, and the full legal names and dates of birth of all minor children of the parties.~~
- (2) A statement describing all efforts made by the parties prior to the settlement conference to settle the ~~disputed~~ remaining contested issues. ~~This statement must include a list of all issues that have been resolved or settled and a brief description of the terms of the resolution or settlement~~including a summary of the face to face settlement meeting or a detailed statement indicating why the face to face meeting did not occur.
- (3) ~~A statement describing all issues that remain in dispute.~~ **Statistical facts:**
  - (a) Date of marriage or registration of domestic partnership; date of separation; length of marriage or partnership in years and months.
  - (b) Names and ages of minor children.
  - (c) Ages of parties.
  - (d) Disputed issues as to statistical facts.
  - (e) All material facts upon which a party relies regarding any disputed issues as to statistical facts.
- (4) **Child custody and visitation:**~~As to each issue in dispute, the statement must include all facts in dispute, any disagreements as to controlling law and the reasons supporting the position that party is asserting.~~
  - (a) Terms of existing custody and visitation orders and agreements.
  - (b) A detailed proposal for custody and visitation orders and all material facts in support of the proposal.
- (5) **Child support:**~~A completed Income and Expense Declaration (FL-150).~~
  - (a) Terms of existing child support orders and agreements.
  - (b) Proposal or child support orders.

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- (c) All material facts in support of any special circumstances regarding income, expenses, ability to earn, or other facts relevant to child support.
  - (d) A DissoMaster or other approved printout setting forth all proposed findings regarding child support.
- (6) **Spousal support:** ~~A completed Property Declaration (FL-160) listing all assets and claims subject to disposition by the court, including all required schedules and documents (redacted to remove social security numbers and all but the last four digits of account numbers). If the party asserts reimbursements or credits in the property division, a detailed listing of such reimbursements and credits must be attached as an exhibit to the schedule.~~
  - (a) Terms of existing spousal support orders.
  - (b) Proposal for spousal support orders.
  - (c) A full item-by-item analysis of all material facts as they relate to the factors set forth in Family Code section 4320.
  - (d) A DissoMaster or other approved printout showing the tax consequences of the party's proposed spousal support order.
- (7) **Contested property:** ~~Every settlement conference statement must include a specific description of the most recent offers made by the respective sides to settle each of the remaining disputed issues. Additionally, each party must be prepared, upon the request of the court, to provide a written offer that would settle all issues remaining in dispute. The parties may request that such written offers be held in confidence by the court.~~
  - (a) The date the property was acquired.
  - (b) The manner in which the property title is currently vested and, if different, was vested at time of acquisition.
  - (c) The character of the property as community, separate, or quasi-community property, or a combination thereof.
  - (d) All material facts in support of the party's characterization of the property.

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- (e) The current fair market value, the nature, extent, and terms of any encumbrances against the property, and the current net equity in the property.
- (f) A complete statement setting forth the factual and legal basis for apportionment or reimbursement, the formula for apportionment or reimbursement, and the calculated value of each party's community and separate property interests.

**(8) Debts or obligations:** ~~A list of all witnesses the party intends to call.~~

- (a) A list of all debts or obligations of the parties that are claimed to be community liabilities or separate liabilities of the parties with a description of all facts and legal authority that support the claim that each such debt or obligation is community or separate.
- (b) For each such debt or obligation, the name of the creditor, the balance due on the date of separation, the current balance due, and the nature, extent, and terms of any security for the debt.
- (c) If there is a claim for reimbursement, the name of the creditor, the total amount paid on the debt, and the date and source of each payment for which reimbursement is sought.
- (d) A summary of existing orders regarding payment of debts or obligations and reimbursement thereof.

**(9) Attorney's fees, expert's fees, and costs:**

- (a) A summary of existing orders.
- (b) A list of all amounts paid by each party on account of the other party's attorney's fees, expert's fees, and costs, and the balance due, if any.
- (c) A list of all amounts paid by each party on account of his or her own attorney's fees, expert's fees, and costs, and the balance due, if any.

**(10) Documents, schedules, summaries, appraisals, and expert reports:**

- (a) Copies of all appraisals and reports of experts that will or may be offered at trial.
- (b) A list with a description and summary of the contents of all documents, schedules, and summaries that will or may be offered

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at trial with copies attached if relevant to any significant contested issues.

- (c) The name, business address, and telephone number of any expert witness whom a party intends to call as a trial witness, with a brief statement setting forth the substance of the expert's testimony.

**(11) Other witnesses:**

The name, address, and telephone number of any non-expert witness, other than the parties, whom a party intends to call as a trial witness, and a brief summary of the anticipated testimony of the witness.

**(12) Points and authorities:**

All points and authorities and legal argument upon which a party intends to rely must be set forth in the appropriate section of the settlement conference statement.

**(13) Income and expense declaration:**

A current Income and Expense Declaration on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Income and Expense Declaration.

**(14) Schedule of Assets and Debts:**

A current Schedule of Assets and Debts on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Schedule of Assets and Debts.

**(15) ~~Status of settlement proposals:~~**

~~Every settlement conference statement must include a specific description of the most recent offers made by all parties to settle each of the remaining disputed issues. Each party must serve on the other party, at least seven days prior to the settlement conference, a written offer of sufficient specificity to be enforceable which, if accepted, would resolve all issues remaining in dispute; a copy of this offer must be brought to the settlement conference. Additionally, e~~Each party must bring to the settlement conference a written offer that would settle all issues remaining in dispute. The parties may request that such written offers be held in confidence by the court.

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## **(c) Consequences of noncompliance**

In the discretion of the trial judge, the consequences of noncompliance with this rule may include imposition of any sanction or order authorized by law including, without limitation, restricting evidence, continuing the trial, excluding an exhibit, precluding the testimony of a witness, or imposing monetary sanctions.